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No. 07-573

IN THE

Supreme Court of the United States

MARSHALL SPIEGEL, PETITIONER

v.

VOLVO CARS NORTH AMERICA, L.L.C.

PETITION FOR A WRIT OF CERTIORARI TO THE APPEALS COURT OF ILLINOIS

REPLY BRIEF

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Volvo's opposition to the Petition requires only brief comment.

First, Volvo argues that Spiegel did not raise the constitutional question in the appellate court. Of course, this would have been impossible as he is challenging an appellate deprivation of process in the first instance. All the cases cited by Volvo involve situations where the petitioner clearly knew or should have known of his claims in the trial court, or earlier – they all involve non-court actors. Here, it is the Illinois appellate court itself – and specifically the Illinois Supreme Court that deprived Plaintiff of his property right without due process in the form of a hearing. Plaintiff requested a hearing and was denied one. In his request Plaintiff noted a hearing was required as a matter of constitutional law, specifically the due process clause. (App. 10) Plaintiff also noted that a jury verdict is, in fact, a property right. (Id.) There was nothing vague about Plaintiff's request and the pending petition is nothing more than a proper enlargement of the arguments advanced below.

Given judicial immunity issues, it would be manifestly unfair to deprive Plaintiff of review. This Court is the only protection that Plaintiff has against appellate level deprivations of due process in the first instance. The Illinois Supreme Court has, in practice, become far too brazen with its one-sentence denials of review without explanation. Volvo does not deny that unpublished dispositions are essentially written by law students, a fact that is well-known to most Illinois practitioners with meaningful appellate experience. At a minimum this Court should exercise its supervisory

power and remand for a hearing on these issues so that a fuller record can be developed. Something is seriously amiss in the Illinois Appellate Court – where some of the judges, quite frankly, don't seem to be doing their jobs. This assertion is admittedly bold, and yes, somewhat provocative; but it based on knowledge undersigned counsel has gained from years of experience as an Illinois practitioner. At some point there has to be some accountability at the state appellate level and Spiegel would welcome the opportunity to develop an evidentiary record on this point.

Because judges likely cannot be sued directly for negligence in disregarding their judicial duties, only an order from this Court can set things right. Admittedly, this case is in an unusual procedural posture – and, as a result, Petitioner has been limited in the degree and manner in which he has been able to advance his constitutional claims. But that does not mean they haven't been pressed. Indeed, given the manner in which the case was decided in the appellate courts there was no way to feasibly advance them earlier. The Illinois appellate court should not be able to avoid constitutional review by using unpublished dispositions in a manner to hide what is essentially activist judging by a judicial panel that is politically-appointed and hostile to consumer protection claims.

The remainder of Defendant's argument is simply question-begging. Whether a jury's verdict is entitled to due process protection in the appeal process is the question on which review is sought, not a basis to deny review. Volvo's analysis of the issue merely

underscores why it is an important issue that merits this Court's attention.

Plainitiff, Marshall Spiegel, respectfully requests that this Court grant the Petition; or, in the alternative, remand for a hearing (possibly evidentiary) on the issues concerning appellate deprivations of process in the Illinois courts. How else can Plaintiff attempt to prove what many Illinois practitioners know – unpublished opinions are written by law students; this opinion's poor quality is evidence of the fact and the Court avoids accountability for these actions by simply refusing to explain itself or even let a litigant orally address a judge.

Respectfully Submitted,
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